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Court-appointed Communication Assistance Quality Framework

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# Foreword

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# Contents

[Foreword ii](#_Toc50624111)

[Contents iii](#_Toc50624112)

[Introduction 4](#_Toc50624113)

[1.1 Background 4](#_Toc50624114)

[1.2 Purpose 4](#_Toc50624115)

[1.3 Legislative framework 6](#_Toc50624116)

[1.4 Roles and responsibilities 10](#_Toc50624117)

[Qualifications and training 11](#_Toc50624118)

[2.1 Who can provide communication assistance? 11](#_Toc50624119)

[2.2 Training programme 11](#_Toc50624120)

[2.4 Police vetting and criminal history checks. 12](#_Toc50624121)

[Professional conduct 13](#_Toc50624122)

[3.1 Conduct expected of communication assistants 13](#_Toc50624123)

[Providing communication assistance 17](#_Toc50624124)

[4.1 Court-appointed communication assistance service overview 17](#_Toc50624125)

[4.2 Identification and engagement 18](#_Toc50624126)

[4.3 Doing an assessment and preparing an assessment report 21](#_Toc50624127)

[4.4 Planning and preparation for trial 27](#_Toc50624128)

[4.5 Communication assistance at trial 29](#_Toc50624129)

[Performance monitoring and ongoing quality improvement. 31](#_Toc50624130)

[5.1 Governance and leadership 31](#_Toc50624131)

[5.2 Complaints management 32](#_Toc50624132)

[5.3 Performance reporting 32](#_Toc50624133)

[Appendix A: Application form 34](#_Toc50624134)

[Appendix B: Qualification and registration requirements 38](#_Toc50624135)

[Appendix C: The Oath 40](#_Toc50624136)

INTRO

1

# Introduction

### This chapter sets out legislative framework and outlines roles and responsibilities across the justice sector for communication assistance

## 1.1 Background

To enable fair access to justice, a person needs to be able to sufficiently comprehend what is happening in a court proceeding and understand and respond to oral questions.

Understanding the court process and giving evidence can be challenging for many people, particularly when the situation is stressful. For children and young people, people with neuro-diversity, disability or physical or mental health conditions, communication difficulties can be a barrier to effective participation in court proceedings.

Communication difficulties are frequently underestimated. Some people do not recognise they have a difficulty, others may attempt to conceal their difficulty out of embarrassment. A person who can read does not always understand what they are reading. Trauma and anxiety can impact a person’s ability to communicate well verbally in a stressful situation such as a court room. Misunderstanding can lead to unjust outcomes.

Communication assistance is one of the services available during a court proceeding to enable effective participation and access to justice for participants.

Communication assistants (CAs) are specialists and can assist defendants or witnesses whose communication vulnerabilities are such that they would not be able to effectively participate without that specialist support.

The communication assistance service is set up to advise lawyers, police, and judges how to effectively communicate with participants in the justice system. CAs assist participants to understand the process and evidence in court proceedings and give evidence to the best of their ability.

## 1.2 Purpose

This document sets out the Ministry of Justice (the Ministry) quality framework for court-appointed communication assistance services.

This quality framework aims to ensure communication assistance is delivered in a nationally consistent manner by well-qualified and well-trained professionals.

The quality framework covers:

1. qualifications and training for CAs
2. service delivery guidance for communication assistance services
3. performance monitoring and ongoing improvement.

### The outcome agreement for communication assistance requires providers to delivers services in line with this quality framework.

Quality framework overview

### 

### How this document fits with other resources

The primary audience for this document is communication assistance providers and the CAs they employ or contract to provide communication assistance in court proceedings. It will also be used by the Ministry staff.

The Benchmark website (<https://www.benchmark.org.nz>) provides guidelines and other resources about communication assistance and is complementary to the information set out in this document. The primary audience for the benchmark resources is legal professionals.

## 1.3 Legislative framework

The use of communication assistance may be required to meet the objectives of the Evidence Act 2006 in securing a just determination, promoting fairness to all and the enhancement of access to justice. A CA used in a court proceeding is a communication specialist appointed under the Evidence Act 2006 (section 80).

Communication assistance may also be warranted to meet the requirements of the Oranga Tamariki Act 1989 and obligations to disabled persons under the United Nation Conventions of the Rights of Persons with Disabilities (UNCRPD) and children under United Nations Convention of the Rights of the Child (UNCROC).

### The Evidence Act 2006

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| Section 4  Interpretation | ***Current definition:***  **communication assistance** means oral or written interpretation of a language, written assistance, technological assistance, and any other assistance that enables or facilitates communication with a person who—  (a) does not have sufficient proficiency in the English language to—  (i) understand court proceedings conducted in English; or  (ii) give evidence in English; or  (b) has a communication disability.  **Interpreter** includes a person who provides communication assistance to a defendant or a witness.  ***New definition in Sexual Violence Legislation Bill:***  **communication assistance** means any assistance (for example, oral or written interpretation of a language, written assistance, or technological assistance) that enables or facilitates communication with a person who for any reason (for example, insufficient proficiency in the English language, age, or a disability) requires assistance to—  (a) understand court proceedings; or  (b) give evidence. |
| Section 80  Communication assistance | 1. A defendant in a criminal proceeding is entitled to communication assistance, in accordance with this section and any regulations made under this Act, to— 2. enable the defendant to understand the proceeding; and 3. give evidence if the defendant elects to do so. 4. Communication assistance may be provided to a defendant in a criminal proceeding on the application of the defendant in the proceeding or on the initiative of the Judge. 5. A witness in a civil or criminal proceeding is entitled to communication assistance in accordance with this section and any regulations made under this Act to enable that witness to give evidence. 6. Communication assistance may be provided to a witness on the application of the witness or any party to the proceeding or on the initiative of the Judge. 7. Any statement made in court to a Judge or a witness by a person providing communication assistance must, if known by the person making that statement to be false and intended by that person to be misleading, be treated as perjury for the purposes of sections 108 and 109 of the Crimes Act 1961. |
| Section 81  Communication assistance need not be provided in certain circumstances | * + - 1. Communication assistance need not be provided to a defendant in a criminal proceeding if the Judge considers that the defendant—          1. can sufficiently understand the proceeding; and          2. if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them.       2. Communication assistance need not be provided to a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them.       3. The Judge may direct what kind of communication assistance is to be provided to a defendant or a witness. |

### Oranga Tamariki Act 1989

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| Section 10  Duty of court and counsel to explain proceedings | 1. This section applies to the following proceedings and processes:    * + - 1. proceedings under this Act in a District Court, Family Court, or Youth Court (all being first instance courts) and proceedings in the High Court, Court of Appeal, or Supreme Court on an appeal (other than on a point of law only) against a decision, finding, or order under this Act of a first instance court:          2. the process for convening, and the proceedings of, a family group conference convened under this Act:          3. the preparation or review of a plan for a child or young person (a planning process) under this Act:          4. the taking of any other action or making of any other decision (any other process) under this Act that would or does significantly affect a child or young person who is the subject of that process. |
| Section 11  Child’s or young person’s participation and views | (2) In proceedings or a process to which this section applies:   * + - * 1. the child or young person must be encouraged and assisted to participate in the proceedings or process to the degree appropriate for their age and level of maturity unless, in the view of a person specified in subsection (3), that participation is not appropriate, having regard to the matters to be heard or considered; and         2. the child or young person must be given reasonable opportunities to freely express their views on matters affecting them; and         3. if a child or young person has difficulties in expressing their views or being understood (for example, because of their age or language, or because of a disability), support must be provided to assist them to express their views and to be understood; and         4. any views that the child or young person expresses (either directly or through a representative) must be taken into account. |

Court participants that can use communication assistance

Communication assistance is available for defendants and witnesses in criminal cases. Defendants are entitled to communication assistance to enable them to understand the proceeding and to give evidence. Witnesses are entitled to communication assistance only to enable them to give evidence[[1]](#footnote-1). Witnesses include complainants and defence witnesses.

Witnesses and defendants in civil cases are entitled to communication assistance, but parties (litigants) who are not giving evidence are not.

Courts where communication assistance can be used

Courts where communication assistance can be provided include the Supreme Court, the Court of Appeal, the High Court and the District Court. District Court includes the Family Court and the Youth Court. The definition of court is not exhaustive and could include other courts.

Communication assistance is not available for participants in tribunals unless the statute that governs the tribunal specifically states that the Evidence Act applies. If there is a desire to use communication assistance in a tribunal, it will be necessary to look at the legislation for the tribunal to see whether the communication assistance provisions in the Evidence Act might apply.

Oranga Tamariki may provide communication assistance in Family Group Conferences.

Definition of court proceeding

Communication assistance can be engaged in criminal or civil court proceedings.

The court proceeding encompasses the period from the start of the case (filing of a charging document) until its conclusion. This includes pre-trial, the trial, and post-trial e.g. sentencing. While not intended as an extensive list, court-appointed communication assistance can be used to help participants:

* instruct their counsel and to make informed decisions about how their defence is conducted
* participate in any proceeding conducted in a court or in any application to a court connected with a proceeding
* prepare a pre-sentence report.

## 1.4 Roles and responsibilities

### Justice sector roles and responsibilities for communication assistance

The Ministry is responsible for:

* setting operational policy and overseeing that services are delivered in accordance with the policies
* monitoring the quality of service delivery, demand for the service, service coverage, and budgetary impacts
* liaising with the judiciary, legal professionals, Police, Oranga Tamariki and the Department of Corrections on sector wide matters
* timely management of communication assistance referrals, bookings and payment
* operational advice.

The Judiciary:

* approves the use of communication assistance in court proceedings
* directs what type of communication assistance will be provided, the scope of the assistance and any limitations on this
* sets training priorities through the Institute of Judicial Studies.

Providers:

* deliver communication assistance in line with Ministry requirements
* engage with Māori participants and their whānau in culturally responsive way
* support ongoing quality improvement and service development improvements
* provide ongoing professional development for CAs
* manage all employment and contracting arrangements required to deliver the service.

Legal professionals:

* be aware of the communication assistance service and when to use it
* initiate applications for communication assistance as required
* work with communication assistants to implement the Judge directed special measures and ensure participants can understand proceedings and give evidence.

Chapter

2

# Qualifications and training

### This chapter sets the required professional qualifications and training for CAs.

## 2.1 Who can provide communication assistance?

Anyone who provides communication assistance in New Zealand court proceedings must be employed (or engaged as a contractor) by a communication assistance service provider that holds a current outcome agreement with the Ministry.

To be eligible to deliver communication assistance in NZ courts, a person must:

1. have a professional qualification as a speech-language therapist, psychologist, occupational therapist, nurse (mental health specialist), social worker, specialist teacher or other relevant field
2. have a current annual practicing certificate with the relevant NZ governing/ professional body
3. hold a current membership, or be in the process of becoming a member, of the relevant professional body
4. have at least five years’ work experience that involved assessing and improving people’s communication
5. be employed or engaged by a communication assistance service provider that holds a current outcome agreement with the Ministry to provide communication assistance in New Zealand
6. complete, or be working towards completing, the Ministry endorsed communication assistance training programme.

Appendix B sets out specific requirements for each professional group’s qualifications and professional membership or registration and regulatory framework.

## 2.2 Training programme

The Ministry has endorsed a communication assistance training framework and supported development of a training programme that is mandatory for all CAs working in NZ courts. *NB the training programme is yet to be developed.*

The training programme covers the key skills needed to work as a communication assistant in NZ courts. This includes:

* working with people who present with communication needs arising from a wide range of reasons (for example, young children who need to communicate in the adult context of a court proceedings, those who have development and acquired impairments, disorders or disabilities and those with mental health conditions)
* the NZ judicial system and how to operate as a CA in the justice sector
* ethics, conflict of interest, consent, safeguarding children and vulnerable adults
* working with victims and other parties involved in family violence and sexual violence/ trauma
* cultural competency.

In addition, communication assistance providers will have their own induction and mentoring programmes that they provide for new CAs.

As a CA works through the training programme and gains experience as a CA, they can advance from trainee CA to CA, supervising CA and lead CA. Progression through the levels is assessed and approved by the CA’s employer.

* Trainee CA – works under supervision as they complete the training programme and gains experience
* CA – has completed the training programme and has the skills and experience to work without supervision
* Supervising CA – has experience as a lead CA and can mentor and train others
* Lead CA – expertise in a specific area of communication assistance.

The Ministry (or its delegate) will review the communication assistance provider’s training and induction procedures at least every three years to ensure they are effective. The Ministry and the provider will work together to address any issues that are found on review, and to share good practice with other providers.

From time to time, the Ministry and providers may develop additional training modules that will be made available for CAs if relevant.

## 2.4 Police vetting and criminal history checks

It is a requirement under the Children’s Act 2014 regulations that all people remunerated by government funded organisations who work with children are safety checked every three years.

It is the communication assistance service provider’s responsibility to ensure that CAs providing services to the Ministry are police vetted on employment and have regular safety checks every three years.

Once employed, any CA who is charged with a criminal offence must notify their employer immediately. Serious offences may result in the employee being unable to continue to practice as a CA.

Chapter

3

# Professional conduct

This chapter sets out the conduct the Ministry’s expects of all court-appointed CAs.

Communication assistance providers must ensure that any CA they employ or contract to provide communication assistance in court proceedings is aware of the professional conduct expected of them. CAs must raise any issues with their employers in the first instance.

Local Court Registry Officers can provide guidance on appropriate professional conduct if the situation is unclear. The Court Registry Officer will liaise with the Ministry foradvice as required.

## 3.1 Conduct expected of communication assistants

### 3.1.1 Personal conduct

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| **Disclosing a conflict of interest** | A conflict of interest arises when a person’s independence, objectivity or impartiality can be called into question. A conflict of interest may occur if a CA has:   * any personal knowledge or involvement with the case * personal involvement with the participants or other people involved with the case such as a lawyer * an appearance or perception of a conflict of interest.   An example could be assisting in a hearing where a witness is a relative or close personal friend.  A CA must address any actual, potential or perceived conflicts of interest in a transparent way.  Where possible, CAs should disclose any conflict of interest to the Court Registry Officer before confirming availability for a case. If the CA becomes aware of a conflict of interest after taking the case, they must talk to the Court Registry Officer or the Judge who will work with them to determine whether they can continue with the case. |
| **Being impartial** | A CA’s primary responsibility is to the court. Their role is to facilitate fair access to justice. This responsibility overrides their duty to the person they are assisting or to other people involved in a case. They must not act as an advocate or give legal advice to the person they are assisting.  A CA must not breach, interfere with or prejudice the independence of the judiciary by:   * attempting to involve, lobby or influence individual Judges about decisions or matters that are the responsibility of the Ministry or the judiciary (except where such communication is required to deliver the services a CA is providing) * behaving inappropriately with the judiciary, such as attempting to discuss with a judge the details of a case, unless required to do so for work purposes * having unnecessary contact with participants, jurors, and parties to the case, including their families/whānau and lawyers. This should not limit appropriate contact, such as what’s needed to adequately prepare for an assignment.   The CA must not express a personal opinion on the case before the court. They must set aside any personal, religious, or cultural beliefs or circumstances that may influence their impartiality. If a CA considers their objectivity may be compromised, they should withdraw from the assignment. |
| **Keeping information private and confidential** | Communication assistance providers must manage information in a way that is consistent with the Ministry’s Privacy Guidelines.  CAs have a duty to use information only for its intended purpose and comply with all legislative requirements, including those set out in the Privacy Act 2020 and the Oranga Tamariki Act 1989 (in particular s 438).  A CA must keep all case details confidential unless they are ordered to disclose information by a court. If a CA is unsure whether a person requesting information is lawfully entitled to receive that information, they should ask the Court Registry Officer for written confirmation that they can release information.  The communication assistance provider organisation must have written policies and procedures for storing, archiving and disposing of records, and will demonstrate that all case files, both current and closed, are stored securely, archiving and disposal processes are in keeping with relevant legislative requirements and when appropriate, information is disposed of securely.  If a CA is given documents about a case, they must keep these documents confidential. Any notes a CA takes must be kept secure to ensure information about the case remains confidential. Information can be kept secure by:   * using a password or encryption on their computer * not leaving confidential documents where other people might see them or steal them (ie leaving them in a car or on public transport) * not discussing case details in public places such as court waiting rooms * making phone calls or having discussions about a case at a time and a place where they will not be overheard.   If a CA thinks someone has seen documents or information relating to a case, they must:   * try to get the documents or information back, or stop the information spreading * evaluate the risk of the breach – has the information been recovered or destroyed, how many people’s information is involved, how sensitive is the information, could anyone be harmed by the misuse of the information? * report the breach to the Court Registry Officer as soon as practicable after becoming aware that a notifiable breach has occurred, and work with the Ministry to investigate the incident and mitigate any potential harm * analyse what caused the breach and take steps to prevent it happening again. |
| **Information is not to be used for personal gain** | A CA must not take advantage of knowledge obtained when acting as a CA or through access to court information, facilities or privileges, for their own personal gain or to benefit another person.  If a CA feels their role as a CA is being misused by any party, they must inform the Court Registry Officer. |
| **Unauthorised payments or gifts must not be accepted** | The Ministry will authorise payment for the communication assistance service provider’s services. A CA must not accept any other payment (remuneration), gift or gratuity.  If anyone offers to pay a CA (outside of the normal payments process) or give a CA a gift, they must inform the Court Registry Officer. |
| **Protecting the reputation of the court** | CAs must exercise good judgement based on integrity and honesty in every action taken representing the Court and in all situations where their actions could reflect on it.  It is important that CAs respect other professionals and the roles they are required to do. If a CA disagrees with a decision of another professional, it should not be debated in public or in front of the person and their whānau.  CAs are expected to act lawfully during work and in their private life. Any actions that break the law can harm the reputation of the communication assistance service.  CAs must inform their employer and the Court Registry Officer if they are subject to any Police investigation, charged with or convicted of any criminal offence (except an infringement offence) or becomes subject to any court order in relation to a criminal matter.  All breaches and alleged breaches of the law by CAs are of concern, particularly where they involve dishonesty, breaches of trust or violence. |

### 3.1.2 Court protocol

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| **Conduct in court** | When necessary, a CA must bring matters of immediate concern to the attention of the court at the time they occur. The manner in which this is done needs to be agreed with the Judge before the hearing or trial.  A CA should be mindful not to unnecessarily impede or obstruct the pace and flow of court proceedings - where possible, make use of appropriate pauses and breaks in the court process to raise any matters of concern affecting the quality of the person evidence or their understanding of court proceedings.  A CA should assist others to communicate questions put to the person they are assisting as accurately as possible, in a way that facilitates the person’s understanding.  CAs should communicate the person’s answers to questions to the court as accurately as possible. Communicate the person’s reply as given, however irrelevant or illogical it might seem. It is for the court to seek clarification if necessary.  The CA should also be mindful to not disclose information about the person and their support needs in the hearing of the Jury. |
| **Dress standard is formal** | It is expected that CAs will maintain the appropriate dress standard to reflect the function of the court or tribunal. No jeans or casual clothes are to be worn. |
| **Arrive on time** | CAs must arrive on time for the start of the court or hearing. This includes returning from breaks on time. Please arrive at least 30 minutes before the hearing is scheduled to begin. More time may be required if the CA is to assist counsel before the hearing. |
| **Talking to a Judge** | A judge is addressed as “Your Honour”, “Sir” or “Ma’am”.  An associate judge, chair, or referee is addressed as “Sir” or “Ma’am”.  A CA must not interrupt the judge when they are speaking.  Unless told not to, stand when speaking to a judge, or when they speak to you. |
| **Referring to a Judge** | A judge of the High Court, Court of Appeal, and Supreme Court is referred to as “Justice” followed by their surname.  A judge of the District Court or other court (such as the Employment Court or Environment Court) is referred to as “Judge” followed by their surname. |

Chapter

4

# Providing communication assistance

### This chapter sets guidance on delivering the communication assistance service.

## 4.1 Court-appointed communication assistance service overview

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## 4.2 Identification and engagement

### 4.2.1 Who identifies communication support needs

Judges, police, prosecutors, counsel, social workers, defendants, witnesses, whānau, forensic health nurses, Court Victims Advisors, victim support and any other professionals in the justice sector have a role in recognising the need for communications assistance.

The need for communication assistance can be identified at any time during a proceeding, but early is best. Failing to recognise the need for communication assistance before a case reaches court can cause costly delays at trial and unfair access to justice.

4.2.2 Investigating and sharing existing information about a person’s communication support needs

Existing information (such as previous assessments or diagnosis) can be shared between parties with the person or their caregiver’s consent.

Before making an application for communication assistance, anyone with concern about a person’s ability to effectively communicate in a court proceeding, should ask the person, their whānau, social workers, teachers, doctor about their history, educational achievement or previous assessment or diagnosis of neuro-diversity, disability or mental health condition.

Previous assessment reports can be shared between courts at the discretion of the court. This includes previous communication assessment reports, assessments of a person’s fitness to plea or stand trial and reports from Regional Youth Forensics or Forensic Mental Health. Any information that should not be shared with other parties or that does not relate to the person’s communication abilities should be redacted.

Many people who would benefit from communication assistance will not have a diagnosis or a previous assessment. The absence of any previous reports or diagnosis does not mean that the person does not have a communication support need, just that their support needs may be undetected.

A participant may have been involved in the justice system several times. Do not assume that because a participant is familiar with the justice system that they can participate effectively without support. Communication support needs may not have been available or identified previously.

4.2.3 When to make an application for communication assistance

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| **An application for a communication assessment should be completed when a court proceeding involves:**   * a child aged 12 years and under * a defendant or witness with a known or suspected intellectual or learning disability or disorder (including, but not limited to autism, brain injury, dyslexia, Fetal Alcohol Spectrum Disorder, Attention Deficit Hyperactivity Disorder) * a defendant or witness with a mental health condition, trauma induced anxiety or stress that impacts their communication * a defendant or witness with a recent psychiatrist’s or psychologist’s report, including a Fitness to Plead Report or a Mode of Evidence Report that indicates communication difficulties, intellectual disability, poor processing speed, high suggestibility or high stress * a person who presents with comprehension, expression, behaviour, or literacy and sensory “flags”. |
| **Comprehension flags**  The person:   * appears to have difficulty in understanding questions or is confused by what is said or happening * is unable to repeat back what is being said in their own words * seems to focus on irrelevant small points rather than important issues or expresses strange ideas * does not understand common everyday expressions * appears very eager to please/ agrees to statements without the appearance of understanding. |
| **Expression flags**  The person:   * gives vague, un-detailed responses to questions * repeats what was said to them (or parts of what was said) * forgets or contradicts their previous accounts * takes a long time to respond, frequently reformulates their sentences * talks tangentially or is off the topic * talks too much or not enough – uses short, simple sentences or rambles * has no speech or limited speech or is difficult to understand * uses signs and gestures or augmentative (low or high technology) methods to communicate. |
| **Behavioural flags**  The person:   * appears disengaged (uninterested/lethargic/physically withdrawn/does not make eye contact) * responds inappropriately or inconsistently to questions (eg shows inappropriate or unusual emotional responses such as smiling or laughing inappropriately, inappropriate humour or inappropriate confidence or cockiness) * appears to have a short attention span * says they do not remember or “dunno” a lot or repeatedly changes the subject * is easily distracted or restless when listening * is violent or appears over-excited/exuberant. |
| **Literacy and sensory flags**  The person:   * does not read or write well * has hearing impairment or is deaf * has a visual impairment or is blind. |

**Other notes about engaging communication assistance**

Young people older than 12 years do not automatically require communications assistance – this is likely to be necessary only if they have communication difficulties or have experienced trauma.

Interpreters are available for participants who have insufficient proficiency in the English language due to not being fluent English-language speakers or participants who use New Zealand Sign Language. Some participants may require communication assistance and an interpreter to ensure their access to justice.

Communication assistance need not be provided to a defendant in a criminal proceeding if the Judge considers that the defendant can sufficiently understand the proceeding; and if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them.

Communication assistance need not be provided to a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them[[2]](#footnote-2).

### 4.2.2 Making an application for communication assistance

Engagement of communication assistance in a court proceeding is at the judge’s discretion. The judge also directs what type of communication assistance will be provided, the scope of the assistance, and any limitations on this.

The person making the application (eg lawyer) should complete a *Communication Assistance Application Form* (see Appendix A).

The application form should be submitted to the court so that the judge has enough information to approve the assessment and the communication assistance providers have enough information to proceed with an assessment.

If the court requires a written notice of application for communication assistance, the application form can be used as, or submitted with, the written notice of application. When an oral application is being made, the application form can be provided to the court at the time the oral application is made, or any time ahead of the hearing where the oral application will be made.

In the event that a judge directs the use of communication assistance without an application submitted by counsel, the Court Registry Officer will complete the application form on the judge’s behalf and make the referral.

The application form should not include any substantive information regarding the facts of the case (for example the summary of facts). This is to ensure the communication assistance service provider’s assessment is neutral and impartial and that information relating to the case is not disclosed inappropriately. Some information included or attached with the application form will be redacted for this to occur.

The application from should include a summary of any relevant previous assessment reports or information that is available about the person’s communication abilities. Please include only health, education, development or communication related information.

Where possible, the same CA should be used to assist the person through the police investigation and through any court proceeding.

If a fitness to plead or a fitness to stand trial assessment is also being requested or has been done, this should be identified on the application form. Where relevant, the CA will collaborate with the person doing the fitness assessment to work out which assessment should be done first and share information as required.

### 4.2.3 When the communication assistance provider receives a referral

After an application for communication assistance is approved by the Judge, the Court Registry Officer will send the communication assistance provider a copy of the application form (see Appendix A). The application form serves as a referral for communication assistance.

On receipt of a referral, the communication assistance provider should check that their organisation has the required experience to assist the person and is available on the key dates noted. If the referral includes substantive information regarding the case, please contact the Court Registry Officer to discuss.

### 4.2.4 Responding to a referral

The communication assistance provider should email the Court Registry Officer to acknowledge receipt of the referral within one working day.

The communication assistance provider should respond to the Court Registry Officer to either accept or decline the referral within three working days of receiving the referral.

Once the communication assistance provider accepts the assignment, they should schedule the required dates into the organisation’s scheduling system.

Urgent referrals are not recommended but may be required in special cases. The communication assistance provider can agree timeframes for responding to urgent referrals on a case by case basis with the Court Registry Officer at the time of the referral.

The communication assistance provider can decline the referral if they do not have the available expertise, have a conflict of interest or if there are any other circumstances that prevents their organisation from completing the assignment to a high standard.

Where a communication assistance provider declines a referral, the Court Registry Officer will be responsible for reallocating the assignment to an alternative provider.

## 4.3 Doing an assessment and preparing an assessment report

### 4.3.1 Assessment arrangements

**Making initial contact**

The CA does not contact the person directly to arrange the assessment session.

Once the CA has accepted the referral, they should contact the defence lawyer or youth advocate or youth justice social worker (for defendants) or Officer in Charge (for witnesses) to set up the assessment session.

When the defence lawyer, youth advocate, youth justice social worker or Officer in Charge arranges the assessment, they should explain to the person that a Judge wants them to meet with a CA and get their verbal consent to involve a CA.

**Location of the assessment**

The assessment session should take place in a formal setting. Locations to consider include:

* Police interview suite, including those set up with couches and coffee tables to provide a more comfortable environment
* Oranga Tamariki facilities, which may include a specialised interview suite for children or meeting rooms that the person is familiar with
* youth justice facility or prison (when the person is being held in the facility)
* communication assistance organisation offices or meeting rooms
* a meeting room at a court
* a lawyer’s office
* a private room in a community facility.

It is not appropriate for the session to take place in a person’s home, school or workplace except in exceptional circumstances and where no other option is suitable.

Be mindful that the location of the assessment (especially Police and court venues) could induce increased anxiety for the person and decrease their engagement in the assessment process.

If the assessment will take place at a youth justice facility or a prison, the CA will need to work with the defence lawyer or youth advocate to make an application to visit the facility and to get permission to use any equipment such as electronic devices.

**Other people to be present**

*Responsible third person*

The assessment should be done with the CA, the person being assessed and at least one other responsible person present. The third person is there to:

* monitor that the substance of the case is not discussed
* ensure that the CA is not required to be a witness in the case if new information is disclosed during the assessment
* follow up on any information about the case that may be disclosed during the assessment
* help gather historical information relating to the person’s communication skills from whānau or other support people
* help ensure everyone’s safety during the assessment.

For complainants or prosecution witnesses, the responsible third person could be a police officer or forensic interviewer. For a defendant, the responsible third person could be defence counsel.

Being present at the assessment will assist the Officer in Charge or defence counsel gain further insight into the person’s communication difficulties and how they should adapt their questioning.

Should the Officer in Charge or defence counsel not be present, then the CA assessment should be audio or video recorded in full. This allows for verbatim recording of the assessment and any information that may be disclosed. See also “Disclosure of information relating to the case” on page 25.

If there are issues arranging assessments or having a suitable third person present, ask the Court Registry Officer to seek guidance from the court.

*Support people*

The person being assessed should be encouraged to bring a support person to the assessment. The support person should not also be a witness in the case. For child witnesses where their parent/caregiver is also a witness, an alternative support person should be used where this is possible. In cases where there is no other support person available, the CA should audio or video record the assessment and be clear to the support person that their role is to support and observe only.

For youth offenders, a youth justice social worker, other Oranga Tamariki staff or a Lay Advocate would be appropriate support people if parents, guardians or caregivers are unable to attend.

**Introduction letter**

Once the assessment appointment is made, the CA can send a letter of introduction to the person they will be assisting. Send the letter via the defence lawyer or Officer in Charge.

The letter should tell the person:

* what the assessment is for
* what will be done at the assessment
* the date, time and location of the assessment
* that the CA will not discuss the reason why the person is involved in a court case.

Be mindful that the letter should be easy for the person to read and understand.

### 4.3.2 At the assessment session

**Introductions and consent**

When the CA meets the person, they should explain their role, how they might be able to help the person and others involved in the case, and what they will do during and after the assessment. The CA should tell the person they cannot discuss details of the legal case with the CA.

The CA should get the person or their support person’s written consent to conduct the assessment and share the assessment report as appropriate. The assessment report will be sent to the court and then most likely shared with the prosecution and defence lawyers.

Explain to the support person that their role is to support and to observe, not interact in the assessment. The CA can ask the support person questions about the person’s communication abilities.

**What the assessment should cover**

The CA will carry out a specialist analysis of the person’s communication abilities and difficulties. The assessment is not a formal diagnostic assessment but will aim to understand how the person is likely to function in justice contexts in relation to their ability to understand and interact. It will also assess how to best facilitate communication with the person in the court proceeding.

The assessment session should take no longer than an hour to an hour and a half. For some complex communication issues, it is recognised that a second session may be needed.

Communication assessment sessions should (at a minimum) contain tasks for analysis of the person’s:

* attention, listening and concentration
* understanding of spoken language and ability to respond to oral questions
* spoken expression e.g. the person’s vocabulary use, sentence length and structure, ability to recount or describe events
* speech sound intelligibility, including what strategies improve this and use of non-verbal communication
* reading and writing and response to visual aids
* management of stress anxiety and fatigue.

If the case involves sexual violence and violence charges the assessment should include evaluation of the person’s vocabulary for body parts, actions and use of prepositions.

The CA could consider assessing if the person understands and can use legal terms that would be common for a lawyer to bring into a discussion: e.g. “charged”, “deny”, “victim”.

To complete the assessment, with the person’s or their caregiver’s consent, the CA may also gather other information such as the person’s social, health, literacy skills, medical background, level of education and development. The court, lawyer and Officer in Charge can help the CA access existing information where this is available and can be shared.

The CA can engage with the Lay Advocate (if appointed for a young person involved in the Youth Court) to ensure that any relevant cultural or language factors are identified.

**Disclosure of information relating to the case**

While the CA will explain to the person not to discuss details about the case, it is not always possible to prevent the person from making a disclosure. Where the Officer in Charge or defence counsel are present for the disclosure, they can follow up on any new information that is disclosed.

If the Officer in Charge or defence counsel is not present and the person indicates that they want to disclose information about the case, ask the person to wait until a police member or lawyer can be present.

If the person begins to disclose information that will affect the case, the CA must record as accurately as possible what was said, tell their employer and inform the Officer in Charge (for a witness) or the defence lawyer (for a defendant).

Should the disclosure be substantive in new information about the case then the CA should submit an affidavit that includes verbatim transcript of the information disclosed.

**Keeping notes or recording the assessment**

The CA must keep detailed notes and preferably the assessment should be audio or visually recorded (with the witness' consent) to keep an accurate and detailed record.

### 4.3.3 Sharing your preliminary assessment

If a police interviewer or counsel urgently need assistance communicating with the person, a CA may give preliminary advice and may assist at interview, before completing the formal assessment report.

Preliminary advice can be given in a preliminary written report and/or an oral briefing. The preliminary report/briefing can inform the planning for, and conduct of, pre-trial interviews, including lawyers advising and taking client’s instructions.

A preliminary report may also be necessary if there are additional steps required before a full assessment can be completed e.g. someone with hearing issues may need a full audiological assessment and hearing aids fitted before the assessment.

### 4.3.4 The assessment report

The CA will write an assessment report for the court with recommendations on how to facilitate communication with the person to the fullest possible extent.

The assessment report should be set out in a way that assists the lawyers and the judge. It should be clear and concise. Most judges and advocates have had little or no training on developmentally appropriate questioning or how to communicate with vulnerable witnesses or people with learning disabilities. The assessment report recommendations should be specific and well-explained. Outline what should be done and why.

The assessment report should:

1. include a statement about your neutrality and independence and ultimate responsibility to the court
2. contain only information that is relevant to the assessment report and not personal data or information about the person that other parties should not already know
3. include a summary of the assessment process
4. explain the conclusions about the person’s functional communication abilities, giving examples of actual communication
5. outline the person’s communication support needs in the context of the demands on communication that is likely during the upcoming proceeding (eg the demands of attending a hearing to determine variation to bail conditions)
6. comment on the extent to which various adaptations (special measures) in court or use of support tools will likely be effective in establishing effective communication
7. identify specific risks for miscommunication and what should be done to prevent that
8. make recommendations that cover:
   1. whether a CA is necessary at court to facilitate a participant’s communication and how the CA should operate at trial (eg whether they sit next to the witness)
   2. special measures or accommodations (besides a CA being present) that are necessary at trial to facilitate communication with the participant
   3. how to modify questions and if the CA should help counsel prepare questions
   4. any other arrangements or accommodations which are necessary to support effective communication, such as the witness meeting the judge or counsel before trial, or how breaks and the timing of court sessions might be managed
   5. how a person’s skills relating to concentrating, managing sensory stimuli, fatigue, health and emotional wellbeing should be managed.

The assessment report should provide recommendations in a format that enables special measures/ accommodations to be checked off at the pre-trial hearing/ directions conference/ ground rules hearing.

Once completed, send the assessment report to the Court Registrar for distribution to appropriate parties.

The Judge will use the assessment report to inform their decision on whether communication assistance is required and what the scope of that assistance will be. There may be cases where the assessment report concludes that communication assistance is not likely to help the person communicate in the court proceeding.

If the assessment report does not recommend that a CA attend court proceedings, it will usually provide the Judge and both counsel with enough information to be able to support the person’s participation appropriately.

**Addendum Reports**

The CA may be asked to complete an addendum to the original assessment report, particularly if the assessment report has become outdated or the person’s circumstances have changed since the initial assessment. The addendum report is not a critique of the original assessment report and should not be regarded as such.

Ideally, the same CA will do the addendum report. If this is not possible, the new CA can liaise with the original CA, then conduct their own brief assessment with the participant and write a report. Usually, only a short addendum is required.

### 4.3.5 After the assessment report is filed

Once the Judge has considered the assessment report, the Court Registry Officer will contact the CA to let them know what further involvement they will have in the case. If the CA is not asked to assist in the case, they can request a copy of the court’s decision to understand the grounds upon which this decision was made.

The CA may be asked to assist during the pre-trial phase (eg help a defendant in interviews with their lawyer) and/or during a trial.

## 4.4 Planning and preparation for trial

### 4.4.1 Meeting with counsel

The CA, prosecutor and defence lawyer (either together or separately) should meet to discuss the assessment report recommendations. The purpose of this meeting is to ensure both counsel understand how to facilitate communication with the person.

This meeting should take place prior to trial. The court may consider adjournment to enable this meeting to take place.

**Consultation on questions**

It is best practice is that each counsel consults the CA when planning their trial questions if the CA is assisting a person who will be giving evidence. The CA can help counsel prepare the questions in a way that can best be answered by the person. This can ensure the trial runs smoothly as the CA will not need to intervene as much.

If the person is the defendant, the Crown prosecutor or Police prosecutor should not be informed that the person may give evidence.

**Preparation of easy-read documents**

The CA may be requested to prepare easy-read documents to assist counsel in their interactions with the person. This can include preparing an easy-read brief of evidence.

Draft easy-read documents should be sent to the relevant legal professionals for comment and critique before finalising for use with the person.

If the person is the defendant, the Crown prosecutor or Police prosecutor should not be given access to any materials prepared to help the person give evidence.

### 4.4.2 Pre-trial hearings/ directions conferences/ ground rules hearing

To prepare for trial, the court will hold one or more hearings to set the “rules” for the trial. Courts refer to these meetings with different terminology – they may be called directions conferences, pre-trial hearings or ground rules hearings.

These hearings are to record the Judge’s directions in writing and have all parties agree how the trial will be run and precisely what the role and actions of the CA will be. This avoid misunderstanding at trial.

The CA should attend these hearings to discuss the assessment report and ensure that the special measures agreed will meet the person’s needs. The CA can attend the hearing in person or by tele or video conference. If the CA is in court for the hearing, they should sit in the well of the court, but independently of the Police, Crown or the defence.

The pre-trial hearing should be held at least a fortnight in advance of the trial. This allows counsel to have adequate time to absorb the directions and adapt their practice and questioning as required. It will also give the CA time to prepare any visual aids and complete any necessary consultation with counsel regarding questioning, and if appropriate, to have watched any pre-recorded evidential interviews.

If a CA is due to assist a person in court in the next two weeks but has not yet been invited to a pre-trial hearing, they should contact the court to check that the hearing is scheduled, and they will be invited to attend.

At the hearing the CA should:

* have copies of the assessment report and any visual aids or other tools that have been developed for use available
* clarify the recommendations in the assessment report as requested
* clarify what their role will be in court – this includes how the CA will assist the person and how they should communicate any issues to the court and where they should sit
* confirm arrangements to work with counsel on preparing trial questions
* clarify when and how the CA will take their oath (see Appendix C). It is an option for the CA to be sworn in at the outset of the hearing to enable their ability to participate in the hearing as an officer of the court and to facilitate later consultation between the CA and counsel over question preparation.

The CA should receive a copy of the hearing record, so they have clear information on what has been agreed.

A further short hearing may be held closer to the time of trial, or on the first morning of trial, to confirm and/or adjust directions, especially where the trial judge did not issue the pre-trial directions or if there is a change to what has been agreed (eg if the defendant elects to give evidence at trial). The CA should also be present for this and can give advice on any new measures that should be taken to accommodate any changes to the initial agreement.

### 4.4.4 Attendance at Court Education/Orientation

Court education is a programme offered by court victim advisors for all child and vulnerable witnesses in criminal courts.

The Victims Advisor or the Officer in Charge will coordinate this appointment, and both will attend. If a CA is involved in the case, it is usual practice for the CA to attend the court education session.

The court education session usually runs for approximately an hour and a half. The Victims Advisor will often use pre-made booklets to run through court information and duties as a witness. The CA may need to provide running translation and use visual aids or drawings. In some cases, the CA may work with the Victims Advisor to provide highly simplified versions of the resources. It is common for the prosecutor to join the end of a court education session to introduce themselves face to face with the witness for the first time.

Vulnerable defendants do not usually have a set process for any court education or orientation. If the CA considers this would be effective for a defendant, it can be a recommendation in the assessment report.

## 4.5 Communication assistance at trial

4.5.1 During a trial

At trial, the CAs role is to:

* monitor communication and associated issues (e.g. concentration span) and alert the judge to any issues as they arise in a way that is sensitive to what may be heard by the jury or the person being assisted
* assist the judge and counsel to address any issues that arise (eg advise how to reformulate a question or how to clarify any unclear speech)
* use (or assist in the use of) communication and visual aids
* use strategies to assist the person to understand what is being said by others.

The CA’s conversations in court will form part of the court record and may be used as evidence in future hearings.

### 4.5.2 Resolution of issues at trial

If the CA considers there is significant miscommunication or communication is breaking down, they can request a break in the trial and then ask the Court Registry Officer for an in chambers discussion.

All parties can discuss the issues in chambers (away from the Jury) and the Judge will issue new directions to better facilitate communication. A further adjournment may be ordered for counsel to consult with the CA on how to adapt their language.

If a dispute arises during any hearing or trial relating to the need for intervention by the CA or the type or extent of intervention, the court will listen to all parties and determine a way forward.

A longer trial because of CA interventions is justified by the necessity to ensure a fair trial.

### 4.5.3 Communication assistance after trial

After the trial, the CA may be directed by the court to:

* assist in explaining the verdict or outcome to the defendant or to a witness
* assist the witness to prepare and/or deliver a Victim Impact Statement
* assist the defendant to communicate with probation or health officials or cultural report writers for the pre-sentence report
* assist the defendant to understand the sentencing.

Chapter

5

# Performance monitoring and ongoing quality improvement

### This chapter sets out a framework for monitoring communication assistance performance and quality improvement.

## 5.1 Governance and leadership

### 5.1.1 Communication assistance Governance Group

Strategic leadership of the communication assistance service is provided by a Governance Group made up of:

* a judicial representative
* a Crown Prosecutor or defence counsel
* a Court Registry Officer/ Service Manager/ Manager Justice Services
* Ministry managers with communication assistance business ownership from Provider and Community Services, Regional Services Delivery and Senior Courts
* a Manager from the Police or Oranga Tamariki with communication assistance business ownership
* communication assistance provider representative(s)
* an independent Chairperson.

The Governance Group will meet at least annually to discuss strategic matters and quality improvement initiatives relating to the communication assistance service. Matters for consideration may include:

* workforce – access to a highly trained CA workforce that can meet demand for the service
* effectiveness of the service for increasing access to justice
* sector-wide collaboration
* provider performance
* change management of quality improvements.

In addition, the Governance Group may be asked to consider:

* resolution of serious complaints
* suggested changes to the communication assistance service.

### 5.1.2 Outcome agreement and relationship management

Operational management and leadership of the communication assistance service will be provided by a relationship manager who will be responsible for:

* managing relationships with communication assistance providers
* engaging with the Police, Oranga Tamariki and the Department of Corrections on cross-sector matters relating to communication assistance
* providing feedback, advice and guidance to Court Registry Officers and providers
* reviewing and updating the communication assistance quality framework and related policies and procedures as required
* ensuring the Ministry’s communication assistance webpages and knowledge base are up to date
* analysing communication assistance demand, financial costs and service coverage
* monitoring workforce availability, training and professional development
* resolving escalated complaints
* providing a strategic report to the Governance Group at least annually that covers emerging issues and comments on the effectiveness of the service in increasing access to justice
* acting as Secretariat for the Governance Group
* monitoring provider compliance with outcome agreement requirements (includes provider audits)
* procurement of communication assistance services
* responding to Official Information Act requests and Ministerial correspondence as required
* ensuring efficient administration of the communication service (includes referrals, bookings, fair allocation of assignments, and payment in accordance with outcome agreement terms and conditions)
* escalating emerging issues and matters of concern to managers and the Governance Group as required
* ensuring the implementation of ongoing quality improvement initiatives.

## 5.2 Complaints management

Communication assistance providers must have a complaints policy and be able to demonstrate that they have effective systems for reviewing complaints about the quality of services provided.

The complaints policy must reflect the complaints management process set out in the Outcome Agreement.

## 5.3 Performance reporting

Communication assistance providers must report annually to the Ministry on their performance against agreed performance measures.

The Ministry will use the reported information to inform ongoing service improvement and enable communication assistance workforce monitoring and planning.

*Draft performance measures – reporting tool to be developed with providers.*

**Quantity (how much did we do?)**

* Number of assessments, number of cases requiring pre-trial assistance, number of cases requiring trial assistance, number of cases requiring post-trial assistance
* #/ % referrals acknowledged within one working day
* #/ % referrals accepted or declined within three working days of receiving the referral
* #/% assessment reports submitted within 10 working days of the assessment
* Communication assistance rates of use are nationally consistent (Ministry measure)

**Quality (how well did we do?)**

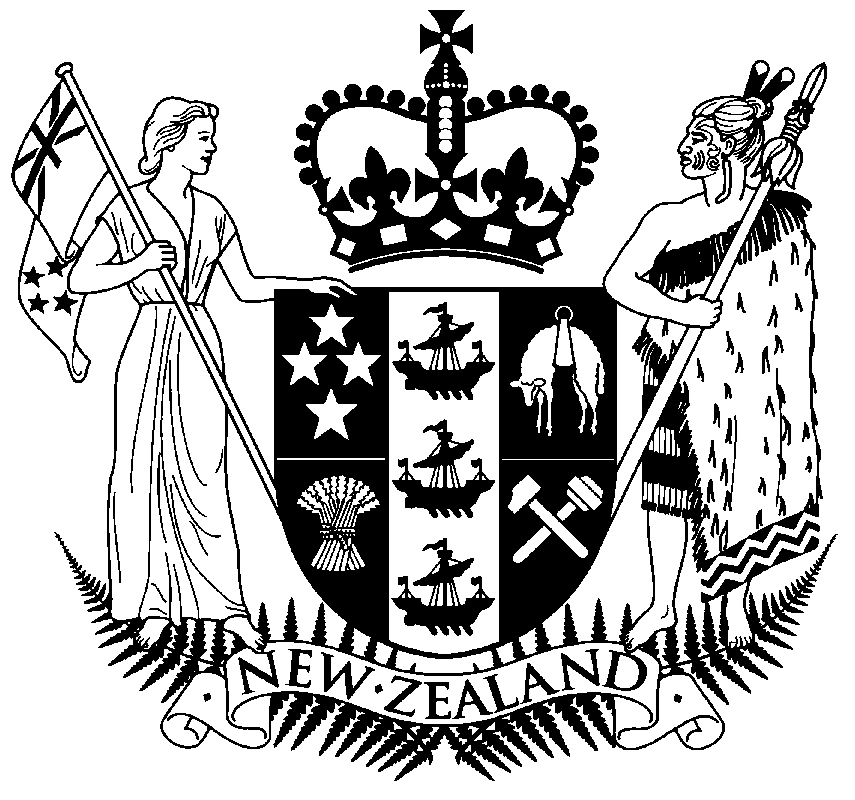
* The proportion of lawyers who report satisfaction with communication assistance services
* The proportion of judges who report satisfaction with communication assistance services
* The proportion of participants and or whānau who report satisfaction with communication assistance services

**Effectiveness (is anyone better off?)**

* Narrative report- examples of how the service delivered effective access to justice.

# 

# Appendix A: Application form

**Communication Assistance**

APPLICATION form

**When to use this form**

Fill in this form when you want a Judge to approve communication assistance.

Complete this form electronically and email it to the court’s email address for filing.

**SECTION 1: Case information**

*Section 1 is to be completed by the person making the application (e.g. Lawyer)*.

|  |  |
| --- | --- |
| **Name of person making application:** Type first and last name here | **Phone Number:** Type phone # here |

**Role:** Type your role here

|  |  |
| --- | --- |
| **Case number:** Type the case number here | **Name of court:** Choose a court from the list |

**Case name:** Type the case name here

**Date communication assessment report required:** Click here to enter a date

**Date of next hearing** (if applicable)**:** Click here to enter a date

|  |  |
| --- | --- |
| **Date of trial** (if known)**:** Click here to enter a date | **Expected length of trial** (if known)**:** Type # of days |

**Agreed mode of evidence at trial (if any):** Click here to enter text

**Has a fitness to stand trial or plead assessment also been requested or done recently?**  Yes  No

|  |
| --- |
| **Brief description of charge(s):** (Do not include substantive information about the case)**:** Click here to enter text |
|  |

**Person to be assessed details**

|  |  |  |
| --- | --- | --- |
| **Name of person to be assessed:** Type first and last name here  **Date of birth:** Click here to enter a date | |  |
| **Ethnicity:** Choose an ethnicity | **If other ethnicity, please specify:** Click here to enter | |

**Language(s) spoken/ understood:** Click here to enter language(s)

**Participant type** (Tick one)**:**  Defendant  Witness

**Residing Town/City:** Click here to enter town/city

In private home  Residential facility  Secure facility

| **Reason for application** | **Tick as many that apply** |
| --- | --- |
| Child aged 12 years and under |  |
| Learning/ Intellectual disability |  |
| Autism (includes Asperger’s syndrome) |  |
| Brain injury |  |
| Dyslexia |  |
| Foetal Alcohol Spectrum Disorder |  |
| Attention Deficit Hyperactivity Disorder |  |
| Mental health condition or trauma induced anxiety or stress that impacts communication |  |
| Has a hearing impairment or is deaf |  |
| Has a visual impairment or is blind |  |
| Recent psychiatrists’ or psychologists’ report, including a Fitness to Plead Report or a Mode of Evidence Report indicates communication difficulties, intellectual disability, poor processing speed, high suggestibility or high stress |  |
| **Comprehension flags** |  |
| Appears to have difficulty in understanding questions or is confused by what is said or happening |  |
| Is unable to repeat back what is being said in their own words |  |
| Seems to focus on irrelevant small points rather than important issues or expresses strange ideas |  |
| Does not understand common everyday expressions |  |
| Appears very eager to please/ agrees to statements without the appearance of understanding |  |
| **Expression flags** |  |
| Gives vague, un-detailed responses to questions |  |
| Repeats what was said to them (or parts of what was said) |  |
| Forgets or contradicts their previous accounts |  |
| Takes a long time to respond, frequently reformulates their sentences |  |
| Talks tangentially or is off the topic |  |
| Talks too much or not enough – uses short, simple sentences or rambles |  |
| Has no speech or limited speech or is difficult to understand |  |
| Uses signs and gestures to communicate or augmentative (low or high technology) methods to communicate |  |
| **Behavioural flags** |  |
| Appears disengaged with what is happening (uninterested/lethargic/physically withdrawn/does not make eye contact) |  |
| Responds inappropriately or inconsistently to questions (e.g. shows inappropriate or unusual emotional responses such as smiling or laughing inappropriately, inappropriate humour/ confidence or cockiness |  |
| Appears to have a short attention span |  |
| Says they do not remember or “dunno” a lot or repeatedly changes the subject |  |
| Is easily distracted or restless when listening |  |
| Is violent or appears over-excited/exuberant |  |
| **Literacy flags** |  |
| Does not read or write well |  |
| **Other** |  |
| Other suspected or known conditions, please specify: Click here to enter text |  |

**Supporting information**

|  |
| --- |
| **Please attach previous reports or summarise the person’s communication abilities:** Click here to enter text |
|  |
| **Please note any topics/ people/ places that should not be mentioned for the person’s wellbeing or any potential safety risks for the assessor:**Click here to enter text |
|  |
| **Note:***Once the person making this application has completed this section, submit it to the court as part of the notice of application or oral application.* |

**SECTION 2: Contact details of professionals involved in case**

*Section 2 is to be completed by Court Registry only*

|  |  |  |  |
| --- | --- | --- | --- |
| **Professionals involved** | **Email** | **Phone** | **Tick person making application** |
| Court Registrar | Type email here | Type phone # here |  |
| Officer in Charge | Type email here | Type phone # here |  |
| Defence Counsel | Type email here | Type phone # here |  |
| Youth Advocate | Type email here | Type phone # here |  |
| Crown Counsel | Type email here | Type phone # here |  |
| Lay Advocate | Type email here | Type phone # here |  |
| Other: Type here | Type email here | Type phone # here |  |

**Communication assistance provider:** Choose a provider from the list

**Referral Date:** Click here to enter a date

**RC Code:** Type RC Code here

**GL Code:** Type GL Code here

# Appendix B: Qualification and registration requirements

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Qualifications** | **Annual practicing certificate** | **Professional membership/ registration** | **Regulation** |
| **Speech-language therapists** | * NZ accredited qualification: https://speechtherapy.org.nz/university-programs/ * Overseas qualification accepted by the NZ Speech-language Therapists’ Association | Issued by NZ Speech-language Therapists’ Association. | NZ Speech-language Therapists’ Association. | Self-regulation by NZSTA |
| **Psychologists** | * NZ accredited qualifications: <http://www.psychologistsboard.org.nz/accredited-training-programmes2> * Overseas qualification accepted by the New Zealand Psychologists Board | Issued by New Zealand Psychologists Board. | NZ Psychologists  Board. | Health Practitioners Competence Assurance Act 2003 |
| **Occupational Therapists** | * NZ Qualifications: https://www.otnz.co.nz/occupational-therapy/occupational-therapy-career/studying/ * Overseas qualifications accepted by the Occupational Therapy Board of New Zealand | Issued by the Occupational Therapy Board of New Zealand. | Occupational Therapy Board of New Zealand. | Health Practitioners Competence Assurance Act 2003 |
| **Social Workers** | * NZ recognised qualifications: https://swrb.govt.nz/social-workers/nz-recognised-sw-qualifications/ * Overseas qualification as recognised by the Social Workers Registration Board | Issued by the Social Workers Registration Board. | Social Workers Registration Board.  (in transition to registration by February 2021). | Social Worker Registration Legislation Act 2019 |
| **Nurse Mental Health specialist** | * NZ Registered Psychiatric   Nurse   * NZ Registered Comprehensive Nurse | Issued by the Nursing Council of New Zealand. | Nursing Council of New Zealand. | Health Practitioners Competence Assurance Act 2003 |
| **Psychotherapist** | * As specified in the NZ Psychotherapist Board Qualifications and Eligibility for Registration Policy. https://www.pbanz.org.nz/index.php?BoardPolicies | Issued by the Psychotherapists Board of Aotearoa New Zealand. | Psychotherapists Board of Aotearoa New Zealand. | Health Practitioners Competence Assurance Act 2003 |
| **Specialist teachers** | * Teacher with postgraduate qualifications in special education. | Current practicing certificate issued by Teaching Council NZ. | Teaching Council of Aotearoa NZ | Education Act 1989 |

# Appendix C: The Oath

CAs usually swear or affirm an oath. In some cases, it is recommended that the oath is undertaken at the pre-trial hearing/ directions conference/’ ground-rules hearing. This ensures the CA can participate freely and ensure confidentiality when either counsel consult the CA over question preparation.

The oath should include:

* a promise that the CA will not disclose any substantive matters discussed in or disclosed in any consultation with either counsel (this covers assistance given at interviews with defendants and sessions with either counsel to prepare questions)
* an obligation to alert the judge to any communication issue arising at trial.[[3]](#footnote-3)

The following CA oath is suggested[[4]](#footnote-4):

*“I solemnly declare and affirm that I shall truly and faithfully assist the Court and Counsel by providing communication assistance during the questioning of \_\_\_\_\_\_\_ to the best of my skill and ability, and I further swear that in the event that counsel request my assistance to formulate age appropriate questions I will not divulge any information given to me during that process to any other person including the witness(es) for whom I am providing communication assistance.*

***Ministry of Justice   
Tāhū o te Ture***

**justice.govt.nz**

info@justice.govt.nz

0800 COURTS   
0800 268 787

National Office   
Justice Centre | 19 Aitken St   
DX SX10088 | Wellington | New Zealand





1. Evidence Act 2006, Section 80. [↑](#footnote-ref-1)
2. Evidence Act 2006 s 81. [↑](#footnote-ref-2)
3. *R v Hetherington* [2015] NZCA 248. [↑](#footnote-ref-3)
4. Source: Judge Duncan Harvey [↑](#footnote-ref-4)